IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE SIDE

WRIT PETITION NO. 1287 OF 2007

ACC Limited .... Petitioner

versus

The Associate Cement Staff Union
& another ..... Respondent.

Mr. J.P.Cama Sr. advocate for petitioner
Mr. P.M. Patel for respondent.

CORAM; A.P. DESHPANDE, J.
DATED; 3RD APRIL, 2007

P.C.;

1. Rule. Rule made returnable forthwith. By consent of parties taken up for final hearing.

2. The petitioner company is engaged in manufacture of cement. It introduced a voluntary retirement scheme on 2-5-2006 which was to be effective for a period of one year commencing from 1st April 2006 to 31st March 2007. On 1-9-2006 the petitioner company announced special voluntary retirement scheme for a limited period of one month i.e. from 1-9-2006 to 30-9-2006. On 5-9-2006 the petitioner issued a notice stating therein that the company has currently a sizable number of employees who are surplus to the business requirement. It is then stated that SAP is

being implemented in the organisation to strengthen and automate the business process. On account of post implementation of SAP, the notice goes to state, the man power requirement for carrying on the business related activities will alter dramatically and a large number of employees will be rendered surplus. The notice then stated that the employees who do not take advantage of the special voluntary retirement scheme, and employees who do not satisfy the post SAP requirement, in terms of qualifications, skills and knowledge and are considered surplus to the requirement, will be dealt with suitably, by following due process of law.

3. On receipt of the said notice, the respondent union filed a complaint before the Industrial Court at Bombay under section 28 of the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971. Respondent contended in the complaint that the petitioner has committed unfair labour practices under item 9 of schedule IV. The respondent recognised union, claimed that the petitioner has introduced SAP which is a software and employees who are not conversant with the operation of the system would become surplus and the change is brought about without issuing notice of change under section 9-A of the Industrial Dispute Act which goes

to alter the service condition. The respondent was apprehending retrenchment of workers on introduction of SAP and were also apprehending that the workmen might be transferred from the city to some other place on being rendered surplus. Visualising the duel threat, it objected to the voluntary retirement scheme, so also notice referred to hereinabove.

4. The Industrial court has rejected the case of the respondent that the petitioner is coercing the workmen to accept voluntary retirement scheme. However, it held that as SAP technology system is introduced without issuing the notice of change, the same constituted unfair labour practice having regard to item No.10 of IV schedule of Industrial Dispute Act.

5. On being satisfied that there is likelihood of retrenchment on introduction/implementation of SAP technology, the Industrial court by passing an interim order has restrained the petitioner from introducing/implementing SAP system till disposal of the compliant or notice of change under section 9-A is given. It is this order, the legality of which is challenged by filing the present writ petition.

6. The learned counsel for the petitioner has pointed out that an affidavit was filed before the Industrial

Court, sworn by one Jaywant S.Patil Dy.Manager of the petitioner company, wherein in para 4 it is stated thus:

> "I say that the respondent company shall not retrench such of the employees who may become surplus in Finance Materials Management and Sales and Distribution functions as a result of the introduction of SAP technology and the Respondent Company shall take steps either to redeploy and/or transfer such of the employees in accordance with their contract of employment."

7. The learned Sr. advocate Shri Cama appearing for the petitioner pointed out that the impugned order has been passed without considering the said affidavit dated 14-11-2006 wherein it is categorically stated that no employee will be retrenched. He further points out that the tribunal has proceeded to grant interim relief as the tribunal found that there was a possibility of retrenchment. The learned counsel has re-iterated and assured this court during the course of argument that no member of the respondent union will be retrenched on account of being rendered surplus on introduction/implementation of SAP technology. In this view of the matter the learned

advocate urges this court to set aside the order passed by the tribunal.

8. Per contra the learned advocate appearing for the respondent union has submitted that apart from retrenchment, there is likelihood of redeployment or transfer of the employees to a place outside the city as the petitioner is carrying on the business at many places in India and hence submits that the impugned order ought not to be vacated.

9. What is to be seen is that the petitioner company has already introducing in a phased manner SAP technology for betterment of its business and the tribunal has restrained the petitioner from introducing/implementing the software SAP technology and if the impugned order is allowed to operate as it is the same is bound to cause prejudice to the petitioner’s business activity. I am of the view that the petitioner should not be restrained from implementing the SAP software technology and at the same time the service conditions of the employees also need to be protected. The members of the respondent union have right not to have their service conditions altered adversely without a notice of change under section 9-A. Right of the petitioner to transfer the employees or deploy them would depend upon the terms

of contract which may vary from employee to employee. Ends of justice would be met by vacating the interim order passed by the Industrial Court and by restraining the petitioner from transferring the employee without leave of the Industrial court so that the Industrial court can scrutinise the legality of the transfer order as and when and if and in case made during pendency of the complaint. Such a deployment or transfer could only be considered if the same is inadherence of the terms and conditions of the employment, which would be reflected from the appointment order and otheer available material. Hence I pass the following order.

i) The impugned order passed by the Industrial court is quashed and set aside.

ii)The petitioner is restrained from effecting retrenchment of any employee on the ground that they are rendered excess on introducing/implementation of SAP technology.

iii) The petitioner shall also not redeploy or transfer the employees without prior permission of the Industrial court and it shall not redeploy/transfer any employee contrary to the terms of employement.

iv_ The Industrial court in the facts of the present case shall proceed to decide the complaint as expeditiously as possible and preferably within a period of six months from today.

Rule made absolute accordingly.

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